IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 15314 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.R.SHAH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JAYABEN JASHBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 15314 of 2003

MR BS PATEL for Petitioner No. 1

GOVERNMENT PLEADER for Respondent No. 1-2

MR MTM HAKIM for Respondent No. 3

..... for Respondent No. 3/1-3/5

CORAM : HON'BLE MR.JUSTICE M.R.SHAH

Date of decision: 28/06/2004

ORAL JUDGEMENT

The petitioner, who was already an agriculturist and purchaser of the land in question, had preferred the present Special Civil Application under Article 226 and 227 of the Constitution of India challenging the judgment

and order dated 16th August 2003 passed by the revisional authority, i.e. learned Special Secretary, Revenue Department (Appeal), State of Gujarat, Ahmedabad in Revision Application No. 1 of 2000 in dismissing the same and confirming the order passed by the Deputy Collector, Vadodara dated 21st December 1999 in Case No. 4/1998 by which an order has been passed setting aside the sale transaction between the petitioner and the respondent No.3 which took place in 1982 for the breach of Section 7 of Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (hereinafter referred to as 'the Act') exercising power under Section 9(1) of the Act.

2. The dispute is with regard to land bearing Survey No. 348/1/2 and Survey No. 346, i.e. Block No. 438 and 440 situate at Village Tajpura, Taluka Padra, District Vadodara with one Mathurbhai Trikambhai Patel was the owner of the aforesaid lands. Respondent No.3 herein are the heirs and legal representative of deceased Mathurbhai Trikambhai Patel. By registered Sale Deed dated 8.4.1982 the petitioner had purchased the land bearing Survey No. 348/1/2 and Survey No. 346 from the said Mathurbhai Trikambhai Patel. Necessary entry was also mutated in the Record of Rights vide Entry No. 1001 dated 28.6.1989 and the said Entry also came to be certified and since 1982 the petitioner is in possession of the land in question pursuant to the aforesaid sale deed dated 8.4.1982. It is the case of the petitioner that as both the aforesaid Survey numbers were given block numbers and they were not fragment land and therefore she has purchased the block. It seems that respondent No. 3/2 Bhadresh Mathurbhai Patel, one of the heirs and legal representatives of deceased Mathurbhai Patel, original land-owner moved an application before the respondent No.2, i.e., Deputy Collector, Vadodara after a period of 16 years of the sale deed and after a period of 11 years of the Entry No. 1001 requesting the Deputy Collector to set aside the sale transaction with regard to aforesaid two lands alleging inter alia that there is a breach of Section 7 of the Act as by the said transaction there would be fragmentation. The said Case was numbered as Case No. 4/1998. It was the case of the petitioner that the sale transaction was a conditional sale and as part of the amount was repaid to the petitioner he requested to take the entry into suo motu review and set aside the same. Before the Deputy Collector, Vadodara, it was contended on behalf of the petitioner No.3/2 to the effect that the land in question has been sold to the petitioner by conditional sale and the consideration is already repaid to the petitioner and

therefore requested to set aside the sale transaction. It seems that the respondent No.3 challenged the title and the sale transaction made for breach of the provisions of the Act. The petitioner also appeared before the Deputy Collector, Vadodara and filed a detailed written submission. It was contended on behalf of the petitioner that as the show cause notice is issued after 16 years of sale transaction which is beyond the period of limitation and at the relevant time a notice under Section 6(2) of the Act is not given the petitioner requested to withdraw the notice. The Deputy Collector, Vadodara vide his judgment and order dated 21.12.1999 passed an order setting aside the sale transaction which took place in 1982 by holding that there is a breach of Section 7 of the Act and directed to take over possession from the petitioner exercising power under Section 9(3) of the Act.

3. Being aggrieved and dissatisfied with the order passed by the respondent No.2 Deputy Collector, Vadodara, dated 21.12.1999 the petitioner preferred an application being Revision Application No. 1/2000 before the revisional authority in State Government, i.e. Secretary, Revenue Department (Appeals), State of Gujarat, Ahmedabad who by his judgment and order dated 5th August 2003 dismissed the said revision application confirming the order passed by the Deputy Collector, Vadodara dated 21.12.1999 without considering the question of limitation and exercise of power by the Deputy Collector, Vadodara after reasonable period.

4. Being aggrieved and dissatisfied with the judgment and order passed by the revisional authority, i.e. Secretary, Revenue Department (Appeals), State of Gujarat, Ahmedabad, dated 5.8.2003 in Revision Application No. 1/2000 in dismissing the same and confirming the order passed by the Deputy Collector dated 21.12.1999 in Case No. 4 of 1998 by which the sale transaction in favour of the petitioner with regard to land in question is cancelled, the petitioner has preferred the present Special Civil Application under Article 226/227 of the Constitution of India.

5. Shri BS Patel, learned advocate appearing on behalf of the petitioner has submitted that exercise of powers by the respondent No.2 after a period of 16 years cannot be said to be exercise of power within a reasonable period. It is further submitted that as such the Deputy Collector ought not to have exercised powers after a period of 16 years of the sale transaction. He has also further submitted that as such there is no

fragmentation at all as the petitioner has purchased the blocks and once they are blocks there is no question of fragmentation. He has also further submitted that the contention of respondent No.3/2 disputing the title on the ground that the sale transaction was a conditional sale cannot be decided by the revenue authorities. He has further submitted that the power exercised by the respondent No.2 Deputy Collector, Vadodara, at the instance of respondent No.3/2, i.e., transferor could not have been exercised by him. He has relied upon the judgment of this Court [Coram: Mr. P.B. Majmudar, J.] in the case of Sarvagna Navinchandra Godiawala Vs. State of Gujarat, reported in 2003 (2) GLR Page 1266 to the effect that even a void order has to be challenged in reasonable time and that when vendor challenged the sale of land after 16 years of the transaction, the authorities erred in setting aside the sale after such lapse of time particularly at the instance of the vendor who was himself at fault.

6. On the other hand, Shri MT Hakim, learned advocate appearing on behalf of private respondents tried to support the order passed by both the authorities below. He has submitted that as the sale transaction itself was in violation of the provisions of the Fragmentation Act the sale transaction was a nullity and therefore it can be set aside at any time for which the period of limitation would not come in the way. In support of the aforesaid argument, Shri Hakim has relied upon the judgment of this Court reported in 1998(3) GLR 2567 by contending that even at a belated stage the authorities can exercise the powers if it is found that there is a fraud committed while entering into sale transaction. He has also argued that the petitioner has suppressed the fact of Special Civil Suit No. 509 of 1995 pending in the Court of learned Civil Judge (SD), Vadodara and Exhibit 5 application having been rejected. He has submitted that as such the sale transaction was a conditional sale and as the sale consideration is returned to the petitioner the petitioner has no title with regard to the land in question and therefore requested to confirm the order passed by both the authorities below by dismissing the Special Civil Application.

7. Heard the learned advocates for the parties. The sale transaction took place in the year 1982. Necessary entry in the Record of Rights came to be mutated in the year 1989 and the same also came to be certified. The respondent No.3 are the heirs and legal representations of deceased Mathurbhai Patel, original land-owner, i.e.

transferor. After a period of 15 years one of the heirs of the original land owner and transferor i.e. respondent No.3/2 approached the Deputy Collector, Vadodara by alleging inter alia that as the sale transaction was a conditional sale and the sale consideration is returned to the petitioner the sale transaction is required to be set aside. On the basis of the said application the respondent No.2 initiated proceedings in the year 1988 by issuing a show cause notice upon the petitioner to show cause why the sale transaction should not be cancelled on the ground that there is a breach of provisions of the Fragmentation Act. The said exercise of power by the respondent No.2 was after a period of 16 years of sale transaction. It is the contention of respondent No.3/2 that the sale transaction was a nullity which was in breach of the provisions of Fragmentation Act. As held by this Court in the case of Sarvagna Navinchandra Godiawala (Supra), even a void order has to be challenged in reasonable time. '16 years' cannot be said to be a reasonable time. The respondent No.2 exercised the powers after a period of 16 years of sale transaction at the instance of the vendor who himself was at fault if any. Even this Court, in the aforesaid Judgment, has also held that the proceedings are not required to be conducted at the instance of the vendor. It is also not in dispute that even the revenue authorities were aware about the said transaction in view of the entry which was decided in 1989, but the authorities had not thought it fit to take any proceeding even after the aforesaid entry in the year 1989. Therefore, the respondent No.2, Deputy Collector, Vadodara , should not have quashed and set aside the transaction after a period of 16 years of sale transaction and after a period of almost 9 years of the entry. Therefore, the aforesaid impugned orders are required to be quashed and set aside. Even this Court, in the case of Jiviben,, widow of Kalaji Bapuji Vs. State of GUjarat, reported in 1998(3) GLR Page 2567, has held that the STate Government was justified in refusing to declare the sale to be void on the application of the vendor of a fragment made long after the sale. In another judgment in the case of Patel Ratilal Mohanbhai VS. State of Gujarat, reported in 2003(1) GLR Page 562, the Division Bench of this Court (Coram: Mr. B.C. Patel and Mr. Jayant Patel, JJ.) had refused to exercise the writ jurisdiction in favour of a transferor who had violated the law in entering into the transaction and in a case where the transferor had made a grievance before the authority after entering into sale transaction that there is a breach of provisions of Fragmentation Act. When a specific query was put to the learned advocate

appearing on behalf of the private respondents with regard to his contention of having fraud committed by the petitioner while entering into sale transaction, initially the learned advocate appearing on behalf of the private respondents had submitted that while rejecting the application below Exh. 5 by the trial Court in Special Civil Suit No. 5/1995, the trial Court has held that there is a fraud committed by the petitioner. The learned advocate appearing on behalf of the private respondents was requested to show from the order passed below EXh. 5, but after having gone through the same he has fairly conceded that there is no finding with regard to the fraud committed by the petitioner as per the said order and he has submitted that by mistake he has made a statement that in the order passed below Exh. 5 the trial Court has found that there is a fraud committed by the petitioner. Even when the learned advocate was directed to point out either from the impugned orders and/or his contention with regard to fraud and/or any finding of having fraud committed by the petitioner, the ld. advocate appearing on behalf of the private respondents is not in a position to point out anything from the impugned orders with regard to fraud having committed by the petitioners while entering into sale transaction. Even from the bare reading of the impugned orders both the authorities below had not held that there is a fraud committed by the petitioner while entering into sale transaction. THerefore, there is no substance in the argument on behalf of the respondent No.3 that there is a fraud committed by the petitioner while entering into sale transaction and therefore the authorities can exercise the powers at any time for which the powers are not required to be exercised within a reasonable period.

8. So far as the argument on behalf of the private respondents to the effect that the sale transaction was a conditional sale and that they had already returned the consideration to the petitioner and therefore the sale transaction is required to be set aside is concerned, the question with regard to title is not required to be considered by the revenue authorities. It is pertinent to note that till date there is no suit filed by the private respondents against the petitioner for cancelling the sale transaction on the aforesaid ground of conditional sale and even both the authorities below had set aside the transaction only on the ground of breach of Section 7 of the Fragmentation ACt exercising the power under Section 9 of the Act. As held by this Court in aforesaid judgments, it cannot be said that the authorities were justified in exercising the power after

a period of 16 years of the transaction and the Deputy Collector-respondent No.1 ought not to have exercised the power at the instance of the vendor assuming that there was a breach of Fragmentation Act when they themselves were at fault.

9. Under the circumstances, considering the facts and circumstances of the case and considering the aforesaid judgments of this Court, the judgment and order passed by both the authorities below, i.e. the judgment and order dated 16.8.2003 passed by the learned Special Secretary, Revenue Department (Appeals), State of Gujarat, AHmedabad in Revision Application No. 1/2000 and also the order passed by the Deputy Collector, Vadodara dated 21.12.1999 passed in Case No. 4 of 1998 are required to be quashed and set aside and are hereby quashed and set aside. Rule is accordingly made absolute with no order as to costs.

[M.R. Shah, J.]

rmr.